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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ANGEL SANCHEZ,

Plaintiff and Appellant,

v.

ELIZABETH ZARATE-ROWELL,

Defendant and Respondent.

B174251

(Los Angeles County  
Super. Ct. No. VC 037143)

APPEAL from a judgment of the Superior Court of Los Angeles County. Peter Espinoza, Judge. Affirmed.

Richard L. Garrigues and Varoujan Nalbandian for Plaintiff and Appellant.

Schmid & Voiles, and Suzanne De Rosa for Defendant and Respondent.

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Angel Sanchez appeals from the summary judgment dismissing her complaint for false imprisonment and negligence against psychiatrist Elizabeth Zarate-Rowell. We affirm.

## **FACTS AND PROCEDURAL BACKGROUND**

On November 19, 2001, Angel Sanchez went to a hospital emergency room for severe abdominal pain. The attending physician admitted Sanchez for observation to determine the cause of her pain. He also asked psychiatrist Elizabeth Zarate-Rowell, M.D., to assess Sanchez's mental condition.

The next day, Dr. Zarate-Rowell met with Sanchez. She learned that Sanchez was under the care of a psychologist and a psychiatrist, who had prescribed medication for her psychological maladies. Sanchez was not, however, taking her medicine regularly and continued to dwell on death and feel anxious and depressed. Dr. Zarate-Rowell diagnosed Sanchez as suffering from bipolar disorder with psychotic features. She prescribed additional medications and suggested Sanchez should admit herself to the hospital's psychiatric ward, where she could adjust to the new medication in a safe environment.

Sanchez objected to moving to the psychiatric ward because it frightened her. Dr. Zarate-Rowell assured her the ward was no different from a general hospital ward and even had the same conveniences as a general ward, such as a telephone and television. Dr. Zarate-Rowell also told Sanchez she would be free to leave the ward whenever she wanted. Still alarmed by Dr. Zarate-Rowell's recommendation, Sanchez phoned her psychologist, who together with Sanchez's psychiatrist, conferred on the telephone with Dr. Zarate-Rowell. Based on the telephone conference, Sanchez's psychologist had the "distinct impression" Sanchez would not be moved to the psychiatric ward. Indeed, Dr. Zarate-Rowell thereafter told Sanchez she could remain in the general ward and would receive her medication there. That was the last time Sanchez saw or spoke to Dr. Zarate-Rowell.

The next day, Sanchez's admitting physician wrote an order transferring her to the psychiatric ward. Presented with the transfer order, Sanchez signed a voluntary admission form, although she later claimed not to remember doing so. When she was moved to the psychiatric ward that evening, she asked to leave. The nurse on duty told her only a doctor, who would not be on duty until morning, could release her, and security would stop her from leaving on her own. The next morning, Sanchez again asked to be released. As there was no basis for holding her against her will, the doctor on duty discharged her.

One year later, Sanchez sued the hospital and Doe defendants for negligence and false imprisonment for transferring her to the psychiatric ward. Eight months later, she named Dr. Zarate-Rowell in place of a Doe defendant.<sup>1</sup> Dr. Zarate-Rowell moved for summary judgment. She argued Sanchez could not prove negligence because expert testimony established her treatment of Sanchez met the standard of care. She also argued Sanchez could not prove false imprisonment because the signed admission form established she voluntarily moved to the psychiatric ward.

The court entered judgment for Dr. Zarate-Rowell. It found Sanchez suffered a failure of proof for negligence because she offered no expert opinion that Dr. Zarate-Rowell acted below the standard of care. It also found that appellant could not create a triable issue of fact on whether she consented to her admission to the psychiatric ward by claiming she did not remember signing the admission form. This appeal followed.

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<sup>1</sup> On appeal, Dr. Zarate-Rowell argues Sanchez named her as a Doe defendant beyond the statute of limitations period. The doctor did not, however, raise the statute of limitations in her motion for summary judgment.

## DISCUSSION

### 1. False Imprisonment

Sanchez contends the court erred in finding she could not prove false imprisonment. We agree with the trial court.

“The elements of . . . false imprisonment are: (1) the nonconsensual, intentional confinement of a person, (2) without lawful privilege, and (3) for an appreciable period of time . . . .” (*Easton v. Sutter Coast Hospital* (2000) 80 Cal.App.4th 485, 496.) Here, a physician other than Dr. Zarate-Rowell signed the order transferring Sanchez to the psychiatric unit and the hospital, not Dr. Zarate-Rowell, carried out that order. Sanchez presents no evidence that Dr. Zarate-Rowell ordered Sanchez’s move to the unit. Indeed, Sanchez concedes Dr. Zarate-Rowell had neither seen nor talked to her after assuring her she could receive her medication in the general ward.

Sanchez’s claim against Dr. Zarate-Rowell turns on Zarate-Rowell’s purported involvement in Sanchez’s decision to sign the voluntary admission form for the psychiatric unit. Sanchez argues the court erred in dismissing her false imprisonment claim after finding that her signature on the admission form proved her admission was consensual. According to Sanchez, there was a triable issue whether Dr. Zarate-Rowell offered certain false reassurances that tricked her into signing the admission form. Those reassurances included the claim that the rooms in the psychiatric ward and general ward were similar, and that she could leave the psychiatric ward anytime she wanted.

Sanchez’s contention fails because the admission form is irrelevant in Sanchez’s claim of false imprisonment *against Dr. Zarate-Rowell* (as opposed to, say, the hospital or the physician who ordered her transfer). Sanchez offers no evidence that Dr. Zarate-Rowell ordered, carried out, was involved in, or enforced Sanchez’s transfer to the psychiatric ward, and Dr. Zarate-Rowell’s description of the psychiatric ward creates no such link. Indeed, Sanchez contradicts herself regarding the admission form. On the one hand, she says Dr. Zarate-Rowell’s reassurances tricked her into signing the admission

form, yet on appeal she says she signed the form under protest. Signing under protest and being tricked are irreconcilable, for protesting presupposes knowledge while being tricked rests on unknowing acquiescence. And even more fatal to her claim, Sanchez says Dr. Zarate-Rowell reassured her she could receive her medication in the general ward. That final reassurance undermines Sanchez's claim that Dr. Zarate-Rowell tricked her to sign the form because the promise of getting her medication in the general ward should have alerted her that something was supposedly amiss when the hospital told her she was being transferred.

## 2. Admissible Evidence

Dr. Zarate-Rowell's expert relied on Sanchez's medical records in opining Dr. Zarate-Rowell's treatment of Sanchez met the standard of care. Sanchez objected to admission of her medical records on the grounds they were not authenticated and hearsay. Sanchez did not, however, secure a ruling from the trial court on her objections, thus failing to preserve them for appeal. (*Sharon P. v. Arman, Ltd.* (1999) 21 Cal.4th 1181, 1186, fn. 1, disapproved on another point in *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853, fn. 19; *Vineyard Springs Estates, LLC v. Superior Court* (2004) 120 Cal.App.4th 633, 643.) In any case, an expert may rely on otherwise inadmissible evidence if the evidence is of the sort other experts in the field reasonably rely upon. (Evid. Code, § 801.) Doctors commonly rely on medical records, making their use by Dr. Zarate-Rowell's expert proper. (1 Witkin, Cal. Evidence (4th ed. 2000) Opinion Evidence, § 33, pp. 564-565.)

Sanchez contends Dr. Zarate-Rowell's statement of undisputed facts in support of her motion for summary judgment also relied on her medical records. Unlike an expert opinion, such undisputed facts must be supported by admissible evidence. (Code Civ. Proc., § 437c, subd. (d).) According to Sanchez, her medical records attributed to her statements she did not make which suggested she was paranoid, delusional, and emotionally troubled. Assuming for argument's sake that the purported false statements

make the records inadmissible, and assuming further for argument's sake that Sanchez did not waive her objections by failing to secure a trial court ruling on them, she still fails to show that Dr. Zarate-Rowell fell below the standard of care by encouraging her to admit herself to the psychiatric ward—particularly when Sanchez was sufficiently unwell to be under the care of a psychologist and psychiatrist and on medication before Dr. Zarate-Rowell even saw her.

### **DISPOSITION**

The judgment is affirmed. Respondent to recover her costs on appeal.

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RUBIN, J.

We concur:

COOPER, P.J.

FLIER, J.